

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 41, “Special Education,” Iowa Administrative Code.

These proposed amendments are technical in nature. First, the term “mental disability” is replaced with the term “intellectual disability.” This change is in line with recent federal legislation on this topic. No substantive change is intended.

Second, the term “preappeal conference” is deleted and replaced with “mediation conference” (or simply “conference”). This change is based on technical assistance from the United States Department of Education, which stated that the term “preappeal conference” could be misconstrued by those persons who are inexperienced with special education procedural safeguards; for example, the term might be misconstrued to be a prerequisite to other procedural grounds. No substantive change is intended. A rule of construction is added, providing that the Department would continue to accept filings labeled as requests for a “preappeal conference.” The Department also made technical and conforming corrections to requirements to file a request for a mediation conference prior to or without filing a due process complaint.

An agencywide waiver provision is provided in 281—Chapter 4.

Two public hearings will be held. The first will be on January 4, 2011, from 2 to 3 p.m., and the second will be on January 11, 2011, from 2 to 3 p.m. Both hearings will be held in the State Board Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

All persons who intend to attend one of the public hearings and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of specific needs by calling (515)281-5295.

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on January 11, 2011. Comments on the proposed amendments should be directed to Thomas Mayes, Legal Consultant, Bureau of Student and Family Support Services, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; E-mail Thomas.Mayes@iowa.gov; or fax (515)242-6019.

These amendments are intended to implement Iowa Code chapter 256B and 34 CFR Part 300.

The following amendments are proposed.

ITEM 1. Strike “mental disability” wherever it appears in **281—Chapter 41** and insert “intellectual disability” in lieu thereof.

ITEM 2. Amend subrule 41.506(4) as follows:

41.506(4) *Special definition Mediation procedures.* ~~In this chapter and in Iowa practice, a request for mediation filed before the filing of a due process complaint is referred to as a “request for a special education preappeal conference,” further~~ shall be conducted according to the procedures described in rule 281—41.1002(256B,34CFR300).

ITEM 3. Adopt the following new subrule 41.506(5):

41.506(5) *Rule of construction.* The department shall accept documents captioned as requests for a “preappeal conference” as requests for mediation prior to the filing of a due process complaint.

ITEM 4. Amend subrule 41.518(5) as follows:

41.518(5) ~~Preappeal conference~~ Mediation requested prior to the filing of a due process complaint. Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any ~~preappeal conference~~ request for mediation filed prior to or in lieu of a due process complaint under rule 281—41.506(256B,34CFR300) and for ten days after a ~~preappeal~~ any such mediation conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in the ~~preappeal~~ any such mediation conference must remain in his or her current educational placement.

ITEM 5. Amend rule 281—41.533(256B,34CFR300) as follows:

281—41.533(256B,34CFR300) Placement during appeals and ~~preappeal~~ mediations. When an appeal under rule 281—41.532(256B,34CFR300) or a request for a ~~preappeal conference~~ mediation under rules 281—41.506(256B,34CFR300) and 281—41.1002(256B,34CFR300) has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in subrule 41.530(3) or 41.530(7), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

ITEM 6. Amend rule 281—41.1002(256B,34CFR300) as follows:

281—41.1002(256B,34CFR300) Special education ~~preappeal~~ mediation conference.

41.1002(1) Procedures. The parent, the LEA or the AEA may request a special education ~~preappeal~~ mediation conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE without the need for filing a due process complaint. The ~~preappeal~~ mediation conference shall comply with the requirements of rule 281—41.506(256B,34CFR300).

a. A request for a special education ~~preappeal~~ mediation conference ~~shall be made~~ may be in the form of a letter ~~which identifies or a pleading or on a form provided by the department.~~ The request shall identify the student, LEA and AEA, sets and set forth the facts, the issues of concern, or the reasons for the conference. The letter shall be mailed provided to the department, to the AEA, and to the LEA.

b. No change.

c. A ~~preappeal~~ mediation conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the ~~special education preappeal~~ checklist to the department and shall provide a copy to the parent within ten business days after receiving the request.

e. The student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the ~~preappeal~~ conference.

f. The individual's complete school record shall be available to the participants at the ~~preappeal~~ conference.

g. A mediator provided by the department shall preside over the ~~preappeal~~ conference.

h. No change.

i. If agreement is not reached at the ~~special education preappeal~~ conference, all parties shall be informed of the procedures for filing a due process complaint.

41.1002(2) Placement during proceedings. Pursuant to rule 281—41.518(256B,34CFR300), unless the parties agree otherwise, the student involved in the ~~preappeal~~ mediation conference must remain in the student's present educational placement during the pendency of the proceedings.

41.1002(3) Withdrawals or automatic closures. The initiating party may request a withdrawal of the ~~preappeal~~ prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

a. No change.

b. The ~~preappeal~~ conference is held, but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the ~~preappeal~~ conference to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.

c. The ~~preappeal~~ conference is held, and the parties are able to reach an agreement, and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

41.1002(4) Confidentiality of discussions. Discussions that occur during the special education ~~preappeal~~ mediation conference must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached at the conference. Prior to the start of the conference, the parties and the mediator will be required to sign an Agreement to Mediate form containing this confidentiality provision.